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**SECRETARY, BOARD OF
OIL, GAS & MINING**

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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Petition of Genwal Resources, Inc., for Review of Division Oder 10-A, Crandall Canyon Mine	MOTION TO CONTINUE EVIDENTIARY HEARING Docket No. 2010-026 Cause No. C/015/0032
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Genwal Resources, Inc., permittee of the Crandall Canyon Mine (“**Permittee**” or “**Genwal**”), Permit No. C/015/0032, by and through its counsel of record, respectfully submits this Motion to Continue the Evidentiary Hearing in the above-captioned matter until the August meeting of the Utah Board of Oil, Gas and Mining (“**Board**”), scheduled on August 24, 2011. Genwal requests the continuance to: (1) allow the parties to complete settlement negotiations through June 22, 2011; (2) if the parties cannot reach settlement by that date, allow the Board thirty days to rule on the pending legal issues in this matter and enter an order by July 27, 2011;

and (3) should the Board decide not to dismiss this matter, allow the parties time to conduct additional discovery and expert analysis prior to the evidentiary hearing on August 24, 2011.

In support of its Motion, Genwal asserts the following:

1. Genwal has petitioned the Board for review of the long-term bonding and treatment requirements of Division Order 10-A (“**DO-10A**”) issued by the Utah Division of Oil, Gas and Mining (“**Division**”) in response to water discharge from the Crandall Canyon Mine. By a Pre-Hearing Order dated October 27, 2010, the Board ordered that the proceedings in this matter shall proceed as set forth in the parties’ stipulation, requiring the Board to first address certain identified threshold legal issues. All other issues raised in the Petition that could require an evidentiary hearing were deferred until the legal issues were addressed by the Board. *See Pre-Hearing Order* dated October 27, 2010, attached hereto as Exhibit A.
2. Genwal and the Division briefed the legal issues in this matter and presented argument to the Board on January 26, 2011. On February 24, 2011, the Board delayed issuance of a ruling for ninety days (90) days to allow the parties to negotiate a settlement.
3. On May 25, 2011, in response to Genwal’s motion, the Board allowed the parties additional time to negotiate through June 22, 2011. The Board further requested that the parties resume proceedings at that time should settlement negotiations prove unsuccessful.

4. Genwal and the Division continue to negotiate in good faith. The most recent settlement meeting occurred between the parties on June 7, 2011 and the negotiations appear to be progressing towards an agreement.
5. However, Genwal proposes that if the parties cannot reach settlement by June 22, 2011, that the Board enter an order on the pending legal issues by July 27, 2011. Such a ruling by the Board is consistent with the Order dated October 27, 2010, by which the Board agreed to enter an order addressing the pending legal arguments prior to proceeding with an evidentiary hearing. The Order dated October 27, 2010, sets forth the schedule that controls the subsequent course of the proceedings in this matter before the Board unless modified by subsequent order for good cause shown. That Order deferred an evidentiary hearing until the Board addressed certain identified threshold legal issues.
6. Should the Board enter a ruling upholding the Division's authority to issue DO 10-A, Genwal requests that the Board allow the parties time to conduct additional discovery and expert analysis prior to scheduling an evidentiary hearing.
7. Genwal needs additional time to conduct discovery due to the unavailability of its key hydrologic expert witness. On June 3, 2011, the Division issued a lengthy supplement to the hydrologic report it prepared in support of DO 10-A. Due to the ongoing spring hydrological sampling season, Genwal's hydrologic consultant is unavailable to review the Division's supplemental report and updated data relied upon in the supplement report, prepare for, assist with and participate in depositions, or otherwise assist in hearing preparation and discovery until

sometime in July. Therefore, Genwal's preparations for the evidentiary hearing, including discovery, cannot be completed before August, 2011.

8. Delay of the evidentiary hearing in this matter until August 24, 2011, will not impair Genwal's compliance with those portions of DO 10-A which are not contested. Genwal has undertaken monitoring and data collection as required by Section I of DO 10-A and has amended the Mining and Reclamation Plan ("MRP") to reflect these additional water monitoring and data collection requirements per Section II of DO 10-A. Genwal has also amended the MRP to reflect current operations and to provide projected costs of mine water treatment pursuant to Section IV of DO 10-A. Genwal has also committed to undertake a hydrologic study of potential sources of the mine water this summer leading to an updated statement of Probable Hydrologic Consequences ("PHC") which is not due to the Division until November, 2011.

For the foregoing reasons, Genwal respectfully moves for a continuance of the evidentiary hearing in this matter until August 24, 2011.

Respectfully submitted this 24th day of June, 2011.

BY: 

ATTORNEYS FOR GENWAL RESOURCES, INC.

SNELL & WILMER, L.L.P.

Denise A. Dragoo

James P. Allen

FABIAN & CLENDENIN

Kevin N. Anderson

Jason W. Hardin

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **MOTION TO CONTINUE** were hand delivered on June 8, 2011, to the following:

Steve Alder, Esq.
Emily Lewis, Esq.
Assistant Attorneys General
Utah State Attorney General
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Michael S. Johnson, Esq.
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Julie Ann Carter
Secretary to the Board
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EXHIBIT A
To
Genwal's Motion to Continue Evidentiary Hearing

FILED

OCT 27 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE PETITION
OF GENWAL RESOURCES, INC. FOR
REVIEW OF DIVISION ORDER
DO10A, CRANDALL CANYON MINE**

PRE-HEARING ORDER

Docket No. 2010-026

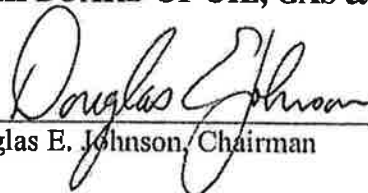
Cause No. C/015/0032F

Pursuant to Utah Administrative Code R641-107-200; after review of the Stipulation to an Order Regarding Pre-hearing Procedures and the Nature of the December Board Hearing entered into by Genwal Resources, Inc. and the Division of Oil, Gas and Mining filed with the Board on October 21, 2010 (providing for exchange of documents, agreeing to a schedule for briefing, defining the nature of the December 8, 2010 hearing and other matters regarding the above entitled Request for Agency Action), and for good cause appearing;

Now Therefore, the Board hereby issues its Order providing that the proceedings in the above-captioned matter shall proceed as set forth in that Stipulation, which is attached hereto and made a part of this Order.

Issued this 27 day of October, 2010.

UTAH BOARD OF OIL, GAS & MINING



Douglas E. Johnson, Chairman

CERTIFICATE OF SERVICE


I hereby certify that on this 28th day of October, 2010, I mailed a true and correct copy of the foregoing **Order** via U.S. mail, postage prepaid, to:

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FILED

OCT 21 2010

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Petition of Genwal
Resources, Inc. for Review of Division Order
DO10A, Crandall Canyon Mine

**STIPULATION
TO AN ORDER REGARDING
PRE-HEARING PROCEDURES AND
THE NATURE OF THE DECEMBER
BOARD HEARING**

Docket No. 2010-026

Cause No. C/015/0032F

The Utah Division of Oil, Gas and Mining (the "Division") and Petitioner Genwal Resources, Inc. ("Genwal") through their respective counsel hereby Stipulate to an Order by the Board of Oil, Gas & Mining (the "Board") providing for a pre-hearing schedule for exchange of documents, agreeing to a schedule for briefing, defining the nature of the December 8, 2010 hearing regarding the review of Division Order DO-10A and related matters. The parties have entered into this Stipulation subject to the approval of the Board in order to address threshold legal issues and the necessity and scope of further proceedings.

The parties hereby stipulate as follows:

1. The Board will resolve the following issues after a hearing at the regularly set December 8, 2010 meeting of the Board or as soon thereafter as the matter may be scheduled:

a. Whether the Division exceeded its statutory and regulatory authority by requiring Genwal to post a bond or establish a trust fund for perpetual treatment of mine water drainage from the Crandall Canyon Mine (the "Mine") as set forth in Division Order 10-A;

b. Whether the Division is required under the Utah Administrative Rulemaking Act ("UARA") to promulgate rules, after public notice and opportunity for comment, before requiring a perpetual funding mechanism;

c. Whether requiring perpetual funding for post-mining treatment of mine water discharges is premature prior to cessation of mining; and

d. Whether the Division Order is unlawful because it fails to identify the amount of the bond or otherwise follow the Division's requirements for bond adjustment.

2. On or before October 25, 2010, the Division will provide
Petitioner;

a. A compact disc containing electronic copies of the documents that are kept in the Public Information Center that pertain to the Mine permit, including the Division Orders and prior actions pertaining to the Mine water discharge; and

b. Copies of any additional correspondence, studies, reports, data or other documents that are in the files of the Division's staff that pertain to the water discharge, the issuance of the Division Orders related

to the mine water discharge from the Mine and the determination of bonding for the mine.

c. A summary of the Division's review of all operating mines with a potential for post-mining discharge of waters in violation of water quality standards and in need of perpetual treatment and the bonding, compliance status and enforcement actions taken for mines with such potential, if any.

3. For purposes of the December arguments on the above identified issues, the parties will prepare a stipulated statement of facts to be used for briefs to be filed with the Board on the aforementioned issues.

4. All other issues raised in the Petition that could require an evidentiary hearing, including, but not limited to, the likelihood of a perpetual discharge requiring treatment and the amount of a bond or other financial assurance to cover treatment costs, will be deferred without prejudice to either party.

4. The parties will file their motions and supporting memoranda and any affidavits in support thereof, simultaneously with the Board on November 15, 2010, and will file reply briefs on December 1, 2010.

5. Petitioner consents to the hearing being held at the December 8, 2010 Board hearing and to the extent that such date is inconsistent with the Petitioner's right to have this matter heard within thirty (30) days of the filing of its petition in this matter, it hereby waives any claims of prejudice and consents to the evidentiary hearing and other scheduling of matters as set forth herein.


6. Following the Board's issuance of its Order on the issues presented and argued at the December Board hearing, the parties shall assess the need for, and scope of, additional discovery, expert analyses and hearings in light of the Board's conclusions and shall present a Stipulation or Motions for discovery and further proceedings in this matter.

8. This Stipulation is subject to the approval of the Board and entry of its Order regarding the matters as agreed to herein.

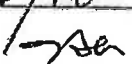
The foregoing Stipulation is approved by signature of counsel as of the date shown.

Dated: 10/21/10


GENWAL RESOURCES, INC.

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Dated: 10/20/10


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